IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 23 of 2005
IN
COMPANY APPLICATION No. 438 of 2004
WITH
COMPANY PETITION No. 24 of 2005
IN
COMPANY APPLICATION No. 440 of 2004
WITH
COMPANY PETITION No. 25 of 2005
IN
COMPANY APPLICATION No. 439 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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CASIL HEALTH PRODUCTS LIMITED - Petitioner(s)
Versus
.. - Respondent(s)

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Appearance :

MRS SWATI SOPARKAR for Petitioner No(s).: 1.
MR JITENDRA MALKAN for Respondent No(s).: 1.
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CORAM :HON'BLE MR.JUSTICE K.A.PUJ

Date : 18/07/2005

COMMON ORAL JUDGMENT

1. These are the petitions filed by three petitioner Companies for sanction of a Scheme of arrangement consisting of Slump Sale of two of the divisions of Casil Health Products Limited (CHPL) to Biosulin International Private Limited ("BIPL") and amalgamation of residual Casil Health Products Limited with Genvista Pharmaceuticals Private Limited ("GPPL"), the Transferee Company under Section 391 read with Section 394 of the Companies Act, 1956.

2. All the petitioner Companies belong to the same group of management. CHPL, the Transferor Company is a listed public limited Company. One of the petitioner Companies viz. Biosulin International

Private Limited (BIPL) is a wholly owned subsidiary of CHPL. The other Company viz. GPPL is engaged in the manufacturing of pharmaceutical products. CHPL is engaged in both manufacturing and trading of various items required for medical profession other than drugs and pharmaceuticals. The arrangement is proposed with a view to segregate the manufacturing and trading activities. It is envisaged that this will facilitate the concentrated efforts for expansion in respective activities. The petitions give details of the advantages that would flow by virtue of the arrangement between these companies.

3. The proposed Scheme was approved unanimously by the Equity Shareholders and Unsecured Trade Creditors of the Transferor Company at the duly convened meetings. The same was approved unanimously by the preference shareholders and unsecured loan creditors through the consent letters which were put on record along with the

application. The consent letters of the Secured Creditors are also brought on record vide an additional affidavit dated 20th June 2005. The Equity Shareholders of both Transferee Companies also approved the Scheme through their consent letters. Hence, the meetings of the Preference Shareholders, Secured Creditors and Unsecured Loan Creditors of CHPL were not required to be held and accordingly they were dispensed with vide the order passed on 27.12.2004 annexed to the petitions as Annex. D.

4. After the petitions were admitted, the same were duly advertised in the newspapers viz. Indian Express, Ahmedabad Edition and Loksatta-Jansatta, Ahmedabad edition dated 17th February, 2005 and the publication in the Government Gazette was dispensed with as directed in the order dated 7th February, 2005. No one has come forward with any objections to the said petitions even after the publication.

5. Notice of the petition of the petitioner Transferor Company was served upon the Official Liquidator attached to this Court. Vide report dated 20th April 2005, filed by the Official Liquidator, he has observed that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of their members or to the public interest. He has, however, further observed that the Auditors appointed for the purpose of scrutiny and investigation of the Books of Accounts and affairs of the Company have observed in their report that the Scheme of arrangement of Transfer and amalgamation of CHPL with Companies having almost no business and no financial worth is not adding any value to shareholders. The purpose and benefits of amalgamation can be achieved by financial restructuring of the Company CHPL as proposed through Special Resolution in Annual General Meeting and subject to this, the Auditors

are of the view that the affairs of Casil Health Products Limited have been conducted in a manner, which is not prejudicial to the interest of its members or public interest.

6. In view of the above observations made by the Official Liquidator in his report, the Court has perused the report of the Auditors. The Auditors have, on the basis of details, documents, accounts and statements and other evidences furnished to them and on the basis of their scrutiny and investigation of the Books of Accounts and affairs of the Company and explanations and informations given to them, they have made certain observations based on facts and analysis on the following issues which are as under :-

7. In the case of transfer of the Diacon and Hospicon divisions of Casil Health Products Limited (CHPL) to Biosulin International Pvt. Ltd. (BIPL) w.e.f. 31.12.2004, the first issue was raised as to

whether BIPL is wholly owned subsidiary of CHPL and after detailed discussion, the Auditors were of the view that the Company is not a wholly owned subsidiary Company of CHPL till the date of order passed by this Court on 27.12.2004.

8. With regard to the second issue, namely, whether consideration payable by BIPL to CHPL is just and proper, the Auditors have observed that the net assets worth Rs. 948.68 Lacs are transferred to BIPL for a consideration of Rs. 100,000/- which is not just and fair.

9. The third issue raised by the Auditors is as to whether the purpose and benefits of transfer of two divisions of CHPL to BIPL are achieved. The Auditors have observed that due to transfer of two divisions of CHPL to BIPL, the purpose and benefits will be not achieved. On the contrary, there will be negative effects as pointed out by them in the report.

10. With regard to the 4th issue, namely, whether the transfer of two divisions of CHPL to BIPL is in the interest of members, the Auditors have observed that due to transfer of two divisions of CHPL to BIPL, the members will loose profit making divisions and assets worth Rs. 948.68 Lacs.

11. With regard to the 5th issue raised by the Auditors is that whether transfer of two trading divisions of CHPL to BIPL is in the public interest, the Auditors have observed that the transfer of two divisions of CHPL to BIPL will not be in the public interest as on the financial strength of CHPL, huge loans are sanctioned by bankers and it will be difficult for a new Company to repay the same and due to this the Bankers will suffer in future. It is also not in public interest on the ground that the profitable divisions and assets are transferred to a Company in which some directors of the group are interested and after

transfer there will be no control of Company Law Board, SEBI and Stock Exchanges, as the Company will be no more a listed public Company.

12. With regard to the merger of residual CHPL with Genvista Pharmaceuticals Pvt. Ltd. (GPPL) w.e.f. 01.01.2005, the Auditors have raised the first issue as to whether the valuation of shares and share exchange ratio is just and fair. The second issue as to whether the purpose and benefits of merger of residual CHPL with GPPL are achieved, the Auditors have observed that due to Merger / Amalgamation of CHPL with GPPL, the purpose and benefits are not achieved. On the contrary, the same could have been easily achieved by passing the special resolution of Capital Reduction in Annual General Meeting on 29.09.2004, as the Bankers had already granted huge loans of Rs. 24 Crores in August, 2004. With regard to the third issue as to whether the merger of Residual CHPL with GPPL is in the interest of members, the

Auditors have observed that due to merger of CHPL with BIPL, the members will loose profit making divisions having assets worth Rs. 948.68 lacs and there is no fair exchange of their shares which means the merger is not adding any value to the shareholders. The 4th issue raised by the Auditors is as to whether the merger of Residual CHPL with GPPL is in the public interest, the Auditors have observed that the merger of Residual CHPL with GPPL will not be in the public interest on the same grounds as were stated while considering the transfer of two units of CHPL to BIPL.

13. These observations made by the Auditors in their report were brought to the notice of Mr. S.N. Soparkar, learned Senior advocate appearing with Mrs. Swati Soparkar, learned advocate for the petitioners and they were asked to offer their explanation in respect of the said observations. Accordingly, a detailed affidavit is filed before this Court on 06.07.2005.

14. Before dealing with each of these objections, it has been submitted by Mr. Soparkar on the basis of the affidavit that the Auditors have given a report as to the affairs of the Company by clearly stating that they have not been conducted in the manner prejudicial to the interest of its members or to the public interest. That is the only scope of inquiry under the provisions of the Act and in view of the positive report given by the Auditors, observations made by them on merits which are completely irrelevant in so far as the Official Liquidator is concerned, are required to be completely ignored. He has further submitted that the Auditors have exceeded their jurisdiction and travelled in the area which was not, in any way, meant for them. He has, therefore, submitted that all observations made by the Auditors in annexure to investigation report are required to be discarded. Mr. Soparkar has further submitted that before reaching the conclusion, some of which

are factually incorrect and some are factually misleading, the Auditors did not even call for explanation from the petitioner on any point/issues opined by them. Had they sought for any further information and/or clarification from the petitioner, the petitioner would have given detailed reply which would have ensured that the Auditors would not make factually incorrect and/or legally unsustainable observations. The whole report is prepared behind the back of the Company without even calling upon the Company to give its explanation. The said report should totally be ignored by this Court.

15. Mr. Soparkar has further submitted that the petitioner Company had substantial bad and/or doubtful assets. It was necessary for the petitioner Company to recognize impairment in the value of those assets/debts. It also has substantial loss in its books of accounts. Under the circumstances, at one stage, it was thought

appropriate to reduce the capital and write off the loss suffered by the Company. However, the petitioner is a listed Company wherein public at large also hold shares. The management of the Company viz., Modi Group did not want the outside shareholders to suffer this loss. It was, therefore, thought appropriate to reduce only preference share capital held by Modi Group from Rs. 5Crores to Rs. 5 Lacs. In other words, the management would sacrifice Rs. 4.95 Crores in the process in order to restructure the Company's financial health. Keeping this object in mind, it was proposed to reduce capital and a resolution was sought to be passed at the 15th Annual General Meeting of the Company held on 29th September, 2004. However, by that time the meeting was held, the internal auditor of Cadila Group of Companies felt that mere reduction of the capital of the Company by a sum of Rs. 4.95 Crores would not adequately take care of the problems. It appeared that the loss to be provided for was much in

excess of Rs. 4.95 Crores. In view of this, in the meeting dated 29.09.2004, the said resolution of reduction of capital was lost.

16. Mr. Soparkar has further submitted that the internal Auditors of Cadila Group examined the issue of financial impairment of assets and gave a report dated 20th October, 2004 wherein it was suggested that the total financial impairment is approximately in the sum of Rs. 13.25 Crores. The said report was placed in the meeting of the Board of Directors of the petitioner Company on 30.10.2004. The Board discussed and deliberated on the report and decided to appoint a consultant who can analyze and determine the amount to be written off and also to work a mechanism for the financial restructuring for the Company. In light of this, M/s. RSM & Co. Chartered Accountants, Mumbai, were appointed to examine the issue. The said firm examined the issue in detail and ultimately suggested the present scheme of

restructuring. The said firm believed that two divisions of the petitioner Company, Hospicon and Diacon divisions need to be parked in a separate Company and the other activities viz., Sulfolane and Softgel may continue either in this Company or may be merged with another Company which may be a shell Company for the purpose of ensuring that the Company starts with a clean slate. The Management of the Company did not or does not have any desire, even remotely, to take away any assets of the Company or to do any act which would prejudice the shareholders of the Company. It is for this reason that it was decided to park the two outgoing divisions into a wholly owned subsidiary of the Company so that shareholders of this Company would continue to reap benefits of these divisions even after the restructuring. Mr. Soparkar has further submitted that the Auditors have raised some doubt about the contention of the petitioner that Biosulin International Private Limited (BIPL) was not a wholly owned subsidiary

on 03.04.2004. This controversy is totally irrelevant. It is not disputed that BIPL is a wholly owned subsidiary today. If that be so, whether BIPL was subsidiary in a past date or not, can have no bearing on the fact that as on today two outgoing divisions are being transferred to the wholly owned subsidiary of the petitioner.

17. Mr. Soparkar has further submitted that the second part of restructuring was that the Company with the remaining divisions would be merged with Genvista Pharmaceuticals Private Limited (GPPL), which is a shell Company with paid up capital of Rs. 5 Lacs only. Under the Scheme of amalgamation, it would be issuing equity shares of the sum of Rs. 547 Lacs to the shareholders of the petitioner Company. Therefore, of the total equity, more than 99% would be held by the shareholders of the petitioner Company in the same ratio in which they hold shares in the present Company. As all assets of the petitioner Company,

including investment in BIPL, would stand transferred to GPPL, the present shareholders of the Company would continue to enjoy all the assets of the present Company by holding shares of GPPL, which is the Company which also owns BIPL as the latter would be its wholly owned subsidiary. He has, therefore, submitted that net effect of the present Scheme is that (a) Of the petitioner Company, two divisions would be transferred to another Company and then the present Company would be merged with GPPL. (b) The other Company where two divisions are transferred is wholly owned subsidiary of the petitioner and will be wholly owned subsidiary of GPPL. (c) The shareholders of the present petitioner would hold more than 99% of shares in GPPL in the same ratio in which they are holding shares today. He has, therefore, submitted that what is owned by them today, through the petitioner Company, would be owned by them through their holding in GPPL and consequential in its subsidiary BIPL. He has,

therefore, submitted that there is no loss whatsoever to any shareholder of the Company. The Auditors have unfortunately drawn factually erroneous conclusions and the basic issues of financial transactions were either not appreciated by them or were misunderstood.

18. With regard to the specific issues raised by the Auditors, Mr. Soparkar has submitted that so far as the approval of the Stock Exchange, Mumbai is concerned, after examining the issue in great detail, the Stock Exchange Mumbai has already agreed to the Scheme of Arrangement. The letter of approval has already been placed on record of this Court along with the earlier affidavit dated 29.06.2005. This shows that the Stock Exchange is satisfied about the genuineness of the Scheme.

19. With regard to the various observations made by the Auditors, Mr. Soparkar has submitted that the first observation made by the Auditor is that

(BIPL) was not a wholly owned subsidiary of the petitioner in the month of April 2004, though, the petitioner has claimed to that effect. The said observation is made on the basis of the fact that consideration for transfer of shares has been released by the transferor somewhere in the month of March 2005. The transfer of shares has taken place from one group company to another group Company and therefore, actual date of transfer of consideration is not material. On the records of BIPL, the transfer of shares is effected on 03.10.2004. Under the circumstances, BIPL became wholly owned subsidiary of the petitioner on and from 03.10.2004. However assuming, while denying, that BIPL became subsidiary at a later date even then, that fact does not change the complexion of the matter at all in as much as admittedly, as on today, BIPL is a wholly owned subsidiary and it is only now that under the orders of this Court the divisions are being transferred to BIPL.

20. Mr. Soparkar has further submitted that the Auditors have disputed the consideration payable by BIPL to the petitioner for transfer of two divisions. The said objection is without any basis for two reasons; (i) The same objection does not take into consideration the fact that there is a substantial impairment in the value of the assets of the two divisions. If the same is taken into consideration, the value would be practically nil. (ii) In any case, when the divisions are transferred to the wholly owned subsidiary, the consideration at which they are transferred is completely immaterial.

21. Mr. Soparkar has further submitted that the Auditors have disputed the purpose and benefit of transfer of two divisions to BIPL by assuming that no benefits would be achieved. It is not the prerogative of the Auditors to opine on appropriateness of a decision taken unanimously by the shareholders of the Company. In any case, he

has assumed that the two divisions are being transferred for an inadequate consideration and as pointed out earlier, such an assumption is factually incorrect.

22. Mr. Soparkar has further submitted that the Auditors have observed that transfer of two divisions of the petitioner to BIPL is not in the interest of members. The said assumption is made by him because of two factually erroneous assumptions viz.; (i) BIPL is a Company in which Directors are interested; this is incorrect, because BIPL is a wholly owned subsidiary of the petitioner. (ii) Assets of Rs. 948.68 Lacs are transferred without proper consideration; that is incorrect, because assets are practically worthless. The assumption that BIPL does not have financial strength to carry out trading business is factually incorrect and in any case beyond the jurisdiction of the Auditors.

23. Mr. Soparkar has further submitted that the Auditors have opined that the transfer of two divisions to BIPL is not in public interest. This is the baseless allegation without verifying the facts. The true facts are that the Bank has sanctioned loan of Rs. 24 Crores (including term loan of Rs. 20 Crores) in order to finance the new activity of the petitioner Company. For this, new set of security in the form of immoveable assets is being created. This is clear from the sanction letter of State Bank of Indore dated 02.08.2004 which is produced by the Auditors in their report at page Nos. 58 to 64. In fact, if the two almost worthless divisions are continued to be owned by the petitioner, the petitioner would have difficulty in undertaking the new project. Therefore, assumption made by the Auditors is completely contrary to the correct facts. The Auditors have assumed that what is being transferred to the BIPL are profitable divisions and assets and that BIPL is the Company in which

some of the Directors of the Group are interested. Both these assumptions are clearly and factually incorrect as is pointed out earlier.

24. Mr. Soparkar has, therefore, submitted that the opinion of the Auditors that the transfer of two divisions of the petitioner to BIPL is not in the public interest is contrary to the facts.

25. With regard to the merger of residual of petitioner Company with GPPL, Mr. Soparkar has submitted that the Auditors have made certain observations. In this connection, the Auditors have disputed valuation of shares and share exchange ratio. It is well settled that the Official Liquidator has no jurisdiction to opine on valuation of shares or share exchange ratio, more so, when it is unanimously approved by the shareholders of the Company. In any case, the disputes raised by the Auditors are on account of factually erroneous assumption about the worth of

the Company and therefore, even on merits, these comments are required to be ignored.

26. Mr. Soparkar has further submitted that the auditors have disputed the purpose and benefits of merger of residual of the petitioner Company with GPPL. He has further submitted that the shareholders and the shareholders alone have a right to comment on this issue. No one else has any jurisdiction in this regard. In any case, these comments are on account of assumption by the Auditors that the loan of State Bank of Indore is in relation to old assets. This is factually incorrect. The second assumption made by the Auditors is about the values of the assets of the two divisions. This is also not correct. As a matter of fact, resolution was already lost and in any case, how financial restructuring should be done is left to the Company and its shareholders. The Auditors have expressed their opinion on the merger of residual petitioner with GPPL is not in

the interest of members. The same is also not correct for the reasons which were already given earlier. Even the Auditors' opinion with regard to the merger that it is not in the public interest, is also not correct. It is for the Bank to consider. Moreover, the facilities were given for the expansion and not for the existing project. The said Bank has already given 'No Objection Letter' to the present Scheme. The Auditors have made the observation on the assumption of so called profitability of division or so-called interest of the Directors of the Group in BIPL, which is not correct.

27. With regard to the comments made by the Auditors on the Management of the Company, Mr. Soparkar has submitted that the promoters of the Company have agreed to make the sacrifices to the extent that the Preference Share Capital of Rs. 5 Crores exclusively held by the promoters would, on amalgamation, stand reduced to Rs. 5 Lacs. The

loan up to Rs. 6 Crores advanced exclusively by the promoters would stand reduced to Rs. 6 Lacs. Effectively, the Promoters are, therefore, taking hit of approximately Rs. 11 Crores. This aspect was not taken into consideration by the Auditors. He has, therefore, submitted that the whole exercise undertaken by the Auditors is completely misconceived and it is not the function of the Auditors to opine on the issue beyond the scope prescribed under the Act. Having once certified that the affairs of the Company have not been conducted in a prejudicial manner, the negative aspect of the report is required to be ignored. In any case, the observation that the purpose and benefits of amalgamation can be achieved by financial restructuring of the Company as proposed through special resolution in Annual General Meeting clearly shows that the Company does need a financial restructuring. If that be so, how the same is to be done is left to the Company and its Management. It is not for anyone else, at least

the Auditors of Official Liquidator, to make the comments in this regard.

28. Notice of the petition has also been served upon the Central Government and Shri J.M. Malkan, learned Assistant Solicitor General appeared for the Central Government. Shri Malkan has put on record the letter received from the Registrar of Companies dated 24.06.2005 along with the letter of the Regional Director dated 16.06.2005 indicating therein certain observations made by the Regional Director. The Regional Director has in all made six observations in his report dated 16.06.2005. The petitioner through its Authorised Signatory has filed detailed affidavit on 29.06.2005 dealing with the said observations made by the Regional Director.

29. With regard to the Scheme of amalgamation involving transfer of two divisions viz,; Diacon and Hospicon divisions of Casil Health Products

Limited (CHPL) to Biosulin International Private Limited (BIPL) w.e.f. 31.12.2004 and merger of residual CHPL with Genvista Pharmaceuticals Private Limited (GPPL) w.e.f. 01.01.2005, the Regional Director has observed that CHPL is a listed Company and the shares of this Company are listed on the Stock Exchanges at Ahmedabad and Mumbai as stated in Company's Balance Sheet as at 31.03.2004. The said Company is in the process of obtaining the NOC from the Bombay Stock Exchange and so far as Ahmedabad Stock Exchange is concerned the Company has furnished the copy of the Scheme to the Stock Exchange vide their letter dated 19.11.2004. However, they have not yet received any response as verbally informed. In this connection, Mr. Soparkar has submitted that under the recent Circular of SEBI, it is imperative for the listed Company to inform the Stock Exchange and in compliance of the same, the Company had approached the Stock Exchange vide letter dated 19.11.2004. The petitioner has

already obtained the clearance from the Bombay Stock Exchange. Since there is no such statutory requirement under the Companies Act 1956, the same is not required to be put before this Court. However, without prejudice to the Company's rights and contentions, the Company has produced the same along with the affidavit at Annexure A. Mr. Soparkar has further submitted that as required by the said letter of Bombay Stock Exchange, the undertaking given by the petitioner Company before Bombay Stock Exchange is also annexed along with the Affidavit at Annexure A-1. She has, therefore, submitted that the observation made by the Regional Director no longer survives in view of this explanation.

30. The next issue raised by the Regional Director is that the Scheme provides for conversion of Unsecured loans not exceeding Rs. 600 Lacs into 10% Cumulative Preference Shares at a face value of Rs. 1 which would be redeemed at a premium of

Rs.99/- per share after a period of six years from the date of redemption. However, the redemption period should not exceed 6 years from the date of issue in view of Sec. 80 (5A) of the Act. The Company has informed that it is intended to redeem these preference shares at the end of 6 years from the date of allotment.

31. The next issue raised by the Regional Director is that para (9) of the Scheme provides for increase in authorized share capital of GPPL (Transferee Company) without complying with any procedure or filing any notice. This provision is objectionable. The Company has to comply with the provisions of Section 97 of the Act by filing Form No. 5 with ROC with necessary registration fees in addition to payment of stamp duty as required under Stamp Act. The Regional Director has also referred to judgment of Madras High Court in the case of Ashok Leyland Finance Limited V/s. Official Liquidator and Others (Company Petition

No. 88 of 2004 connected with Company Application No. 167 of 2004). However, the copy of the said judgment is not produced on record. The Regional Director has further noticed that present Authorised Capital stated in the capital clause of the Memorandum & Articles of Association of the Transferee Company (i.e. GPPL) and its Balance Sheet as at 31.03.2004 is not in conformity with each other, which needs clarification (Rs. 1 Lacs or Rs. 5 Lacs ?). In this connection, Mr. Soparkar has submitted that share capital of GPPL, the Transferee Company as at 31.03.2004 was Rs. 1 Lacs. However, the same was increased to Rs. 5 Lacs vide Special Resolution dated 08.11.2004. The said Company had also filed Form No. 5 with the office of the Registrar of Companies on 29.11.2004, in compliance with the requirement under Section 97 of the Companies Act, 1956. However, due to an inadvertent error, the same was not mentioned in the present petition. He has, therefore, sought the leave of this Court to amend

the petition to this extent. Leave was accordingly granted to the petitioner. The Company has also produced copy of Form No. 5 filed with the office of the Registrar of Companies at the relevant point of time along with the Affidavit as Annexure B. With regard to the second part of the Regional Director's observation, Mr. Soparkar has submitted that Clause 9 of the Scheme provides for increase in the Authorised Capital of the Transferee Company without any further procedure being followed. He has further submitted that when the Scheme is sanctioned by this Court, the Scheme becomes operative with all its clauses. Under the principle of “Single Window Clearance” it has been held in number of cases by various High Courts including this Court that the petitioner is not required to follow separate procedure for separate clearances. The said Clause 9 also provides that the same shall be done “Upon the Scheme becoming operative and on payment of the requisite fees”.

Hence, it is only the procedure that is sought to be dispensed with and not the payment of the Fees. The reliance placed on the judgment of the Madras High Court in the matter of Ashok Leyland Finance Limited is not relevant in the case of the petitioner.

32. The next issue raised by the Regional Director is that the Transferor Company, namely, M/s. Casil Health Products Limited having four divisions viz. Hospicon, Diacon, Kemicon and Softgel – Division wise position is however not given in the additional Balance Sheet as at 31.03.2004. In this connection, Mr. Soparkar has submitted that division wise balance sheet was prepared to facilitate the clear demarcation of properties and liabilities at the time of proposing the Scheme. It was not necessary to give this break up for the Balance Sheet as at 31.03.2004 as per the prevailing accounting standards.

33. The next issue raised by the Regional Director is that as per Company's Advocate's letter dated 09.06.2005, consent letter of secured creditors will be filed with the Gujarat High Court before the date of final hearing. The petitioner Company may be directed to confirm the compliance in this regard. In this connection, Mr. Soparkar has submitted that the petitioner Company has already put the consent letters of the Secured Creditors vide an additional affidavit dated 20.06.2005.

34. In view of the above explanations given on various observations made by the Regional Director, Mr. Soparkar has submitted that the Scheme deserves to be sanctioned and the prayers made in para 23 of the petition be granted.

35. After having heard learned Senior advocate Mr. Soparkar appearing for the petitioner Companies and Mr. Jitendra Malkan, learned Assistant Solicitor General appearing for the Central

Government and after having perused the report of the Official Liquidator with that of Auditors as well as the Regional Director and the explanations tendered by the Company in respect of the observations made by the said statutory authorities in their respective reports and also in respect of the observations made by the Auditors appointed by the Official Liquidator and after having gone through the petitions, additional affidavits and considering the submissions made in this behalf and the compliance made or to be made by the petitioners, the Court is satisfied that the observations made by the Auditors with regard to the different course of action, namely, financial restructuring in place of arrangement, to achieve the purpose and benefit of amalgamation is uncalled for and hence are irrelevant. It is settled position in law that the commercial wisdom of the shareholders is not required to be looked into by the Auditors as the scope of his verification is limited under the

provisions of the Act. The points raised by the Auditors in their report have been duly clarified by the Company in the affidavit filed before this Court and necessary documentary evidences are also produced on the record of this Court. The Court has also taken note of the fact that despite several objections made by the Auditors, they have ultimately come to the conclusion that affairs of the Company have not been conducted in a manner prejudicial to the interest of the Company, its shareholders and Creditors, nor they are contrary to the public interest.

36. The explanations given by the Company in its affidavit and the submissions made by Mr. Soparkar in respect of the observations made by the Regional Director are sufficient enough to persuade this Court to come to the conclusion that the said observations do not survive and the Scheme of Arrangement would be in the interest of the Companies and their members and Creditors.

Prayers in terms of para 23 (A) in case of Company Petition No. 23 of 2005 and para 16 (A) in case of Company Petition Nos. 24 & 25 of 2005 are hereby granted.

37. The petitions are disposed of accordingly. So far as the costs to be paid to the Assistant Solicitor General is concerned, I quantify the same at Rs.3,500/- per petition. The same may be paid to learned Assistant Solicitor General Shri J.M. Malkan directly.

[K.A. PUJ, J.]

Savariya